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July 23, 1999

Magalie Roman Salas, Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

**Re: Federal-State Joint Board on Universal Service,
Access Charge Reform, CC Docket Nos. 96-45, 96-262**

Dear Ms. Salas:

On behalf of Western Wireless Corporation, I am enclosing for filing Comments on the Further Notice of Proposed Rulemaking ("FNPRM"), FCC 99-119, released May 28, 1999, in the proceedings referred to above. These Comments are filed in response to the FNPRM and the Commission's Public Notice, DA 99-1277, released June 29, 1999, extending the filing date for comments until July 23, 1999.

If you have any questions regarding this matter, please contact me.

Respectfully submitted,



Michele C. Farquhar
Counsel for Western Wireless Corp.

Enclosures

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

JUL 26 1999

In the Matter of)	
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Federal-State Joint Board)	CC Docket No. 96-45
on Universal Service)	
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COMMENTS OF WESTERN WIRELESS CORPORATION

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Dated: July 23, 1999

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COMMENTS OF WESTERN WIRELESS CORPORATION

Western Wireless Corporation ("Western Wireless"), by its attorneys, hereby submits Comments in response to the Further Notice of Proposed Rule-making, FCC 99-119, released May 28, 1999 ("Inputs FNPRM" or "FNPRM"), 1/ in the above-captioned proceedings.

INTRODUCTION AND SUMMARY

Western Wireless is the leading commercial mobile radio service ("CMRS") provider that is seeking to provide universal service in rural and high-cost areas in competition with the incumbent local exchange carriers ("ILECs"). Western Wireless has argued throughout this proceeding that an explicit, portable,

1/ *Federal-State Joint Board on Universal Service, Access Charge Reform, Seventh Report and Order and Thirteenth Order on Reconsideration in CC Docket No. 96-45, Fourth Report and Order in CC Docket No. 96-262, and Further Notice of Proposed Rulemaking, FCC 99-119 (released May 28, 1999) ("Seventh Report and Order").*

and competitively neutral universal service system is critical to give residential consumers in rural and high-cost areas the benefits of local competition. Head-to-head competition between wireless carriers and ILECs in rural areas will be possible only if CMRS carriers can participate fully in the universal service support system. To that end, the universal service system must be competitively and technologically neutral and must ensure consumer choice.

Western Wireless supports much of the *Seventh Report and Order*, which represents major progress toward a pro-competitive universal service system. Western Wireless agrees with the Commission's reaffirmed commitment to setting support levels based on the forward-looking economic cost of universal service, determined using a national cost model. It also supports the Commission's commitment to the principles of competitive neutrality and portability of support between ILECs and competitive entrants. 2/ In particular, Western Wireless very much appreciates the Commission's clarification that wireless carriers have the right to be designated as eligible telecommunications carriers ("ETCs") if they meet the criteria set forth in Section 214(e), 3/ and hopes that this statement may make a real difference with potentially wavering state commissions.

In response to the FNPRM, Western Wireless wishes to emphasize three steps the Commission must take to realize its goal of competition in local

2/ *Id.* at ¶¶ 71-74.

3/ *Id.* at ¶ 72.

markets, and in particular those markets in rural and high-cost areas supported by federal universal service mechanisms. First, support should be calculated on a geographically disaggregated basis, such as wire centers (rather than study areas or unbundled network element (“UNE”) zones), to ensure that support is targeted to consumers who most need it and to promote competition in high-cost areas. Second, the Commission should minimize the overall size of the high-cost fund using competitively neutral means, such as a relatively high, tapered cost benchmark, an aggressive, but realistic, assumption regarding the states’ per-line share of responsibility for support, and limitations on any “hold harmless” mechanism. Third, the Commission should avoid imposing regulation on new entrants designed to ensure that support is used only for the purposes specified in the statute, as such regulations would be superfluous.

I. FEDERAL UNIVERSAL SERVICE SUPPORT SHOULD BE CALCULATED AT THE WIRE CENTER LEVEL SO AS TO TARGET IT TO THE MOST NEEDY AREAS.

Universal service support should be calculated at the geographically disaggregated wire center level. As the FNPRM recognizes, this approach could “ensure that adequate support is provided specifically to the subscribers most in need of support” and could “encourage efficient competitive entry in all areas, not just in urban or other low cost areas.” 4/ The fundamental reason for the reform of the universal service system mandated by the 1996 Act is to facilitate competition

4/ *Id.* at ¶ 103.

in all areas, not just the urban, low-cost areas. This can only happen by ending the reliance upon implicit subsidies, such as geographic averaging.

Western Wireless supports deaveraging universal service support to the level of wire centers, rather than the much larger "UNE cost zone" level (typically there will be three such zones per study area). Although there might be some superficial appeal to using an identical geographic unit for determining deaveraged UNE rates, access charges, and universal service support, 5/ the benefits are illusory. In the real world, a tight linkage between the three components of the local competition "trilogy" is impossible to achieve. There unavoidably will be major gaps between the timing of deaveraged UNE rates, which will be implemented state-by-state and even carrier-by-carrier, as opposed to the timing of deaveraged access tariffs and the deaveraged federal universal service program, over which the FCC has more control. More fundamentally, some of the most critical elements in the equation -- the need for deaveraging of intrastate universal service support and possibly local rates -- are largely beyond the FCC's control.

Rather than striving for an impractical degree of micro-management of the development of local competition, the Commission should structure each of the programs in the trilogy to be as pro-competitive as possible. In the specific context

5/ *Id.* at ¶ 104; see also *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Deaveraged Rate Zones for Unbundled Network Elements*, Stay Order, CC Docket No. 96-98, FCC 99-86 (rel. May 7, 1999).

of universal service, as the Commission has recognized, a more deaveraged and granular approach would best reflect costs, provide stronger incentives for facilities-based competition in high-cost areas, and would most accurately target support to the consumers that need it the most. 6/

There are no real disadvantages of using wire centers, as opposed to UNE zones, for calculating universal service support. First, the risk is minimal or non-existent that competitive entrants will exploit uneconomic "arbitrage" opportunities due to the disparity between zones used for UNE pricing and the wire centers used for universal service support. For one thing, many competitive entrants -- including wireless carriers such as Western Wireless -- will rely primarily on their own network facilities, rather than UNEs. For these carriers, basing universal service support on large, averaged geographic units, such as study areas or UNE zones, would create an uneconomic disincentive to entry in the highest cost areas, due to the disparity between the cost of service and the amount of support averaged across a large geographic unit. 7/

6/ *Seventh Report and Order* at ¶ 103.

7/ Moreover, given the high transaction costs for entrants to obtain ETC designation and become eligible for universal service support (as well as the costs and delays of obtaining UNEs through the process of negotiating, arbitrating, and frequently litigating interconnection agreements), it is inconceivable that arbitrageurs would be able to take advantage of the system. These costs and delays mean that prospective entrants must be serious about providing competitive service to consumers.

Moreover, although Western Wireless strongly agrees that the overall size of the high-cost fund should be limited to a reasonable level, 8/ it is far from clear the fund would be substantially larger if support is calculated based on wire centers rather than based on UNE zones. In a “back of the envelope” calculation submitted into the record, former FCC Chief Economist Bill Rogerson and Evan Kwerel show that there would be only a negligible increase in the overall size of the fund if wire centers, rather than UNE zones, were used to calculate support. 9/ The fundamental point is that a system of geographic averaging that would thwart competitive entry *cannot* be the means for imposing limits on the overall size of the fund, particularly given that competitively neutral measures are available to accomplish the same objective.

II. THE COMMISSION SHOULD ADOPT COMPETITIVELY NEUTRAL MEANS TO MINIMIZE THE OVERALL SIZE OF THE FUND.

Western Wireless supports the Commission’s general policy of seeking to minimize the overall size of the federal universal service high-cost fund. The

8/ In the following section of these Comments, we show that the size of the fund should be minimized through competitively neutral means rather than distortive mechanisms such as unnecessary geographic averaging to the study area or UNE zone level.

9/ Bill Rogerson & Evan Kwerel, “A Proposal for Universal Service and Access Reform,” CC Docket Nos. 96-45 and 96-262 (filed May 27, 1999) (cited in *Seventh Report and Order* at ¶ 135 n.317) (“*Rogerson/Kwerel*”). Rogerson and Kwerel’s calculation was undertaken in the context of a proposed system of high-cost support designed to address the issue of deaveraging certain interstate access rates. Their proposal is comparable to, but not identical to, the high-cost support system that is the principal focus of this proceeding.

public interest would not be served by "increased federal support[, which] would result in increased contributions and could increase rates for some consumers." 10/ In this section, Western Wireless offers a number of competitively neutral suggestions for containing the size of the fund. 11/

A. A Tapered Cost Benchmark Would Target Support to Areas That Need It Most, and Would Preserve Affordability.

Adopting a relatively high cost benchmark, with a tapered structure for funding support, is one of the most promising means for limiting the overall size of the fund in a competitively neutral manner. Western Wireless agrees with the second and fourth of the FNPRM's proposals for resolving "the tension between the goal of preventing the fund from increasing significantly above current levels, and the goal of ensuring that support is, to the extent possible, directly targeted to high-cost areas within study areas." 12/ The second proposal -- calculating support on a geographically deaveraged basis while providing only a uniform proportion of

10/ *Seventh Report and Order* at ¶ 69.

11/ In addition to the suggestions that follow, Western Wireless urges the Commission to consider the wireless cost model, which would allow the Commission to measure and distribute federal universal service support based on the lowest-cost technology for serving a high-cost area, whether wireless or wireline. *See Federal-State Joint Board on Universal Service, Forward-Looking Mechanism for High-Cost Support for Non-Rural ILECs*, CC Docket Nos. 96-45, 97-160, FCC 99-120, n.33 (rel. May 28, 1999) (*citing* Letter from David L. Sieradzki, on behalf of Western Wireless, to Magalie Roman Salas, FCC, dated January 26, 1999 (submitting the "Wireless Cost Model")).

12/ *Id.* at ¶ 107; *see also id.* at ¶¶ 107-09.

support 13/ -- would limit the size of the fund in a manner that does not distort competition, while (as the Commission recognized) not seriously undermining the affordability of rates. This or a slightly modified approach would dovetail well with the fourth proposal -- to raise the cost benchmark and/or adopt incremental or “tapered” funding levels similar to the existing high-cost loop support mechanism. 14/

The cost benchmark should be set at no less than 150% of the national average forward-looking cost, and possibly significantly higher. The national average forward-looking cost per line is approximately \$20 per month, while the national average revenue per line is in the neighborhood of \$30 per month. 15/ This means that there is no reason at all to provide any federal high-cost support in areas where lines cost less than 150% of the national average, and the cost benchmark conceivably could be set considerably higher without seriously

13/ *Id.* at ¶ 108.

14/ *Id.* at ¶ 109.

15/ The source of the \$20 average forward-looking cost figure is the “cost benchmark” tab, cell C-105, on the “Wirecenter Workbook” spreadsheet, available at http://www.fcc.gov/Bureaus/Common_Carrier/Public_Notices/1999/d991165b.xls. See *Common Carrier Bureau Releases Revised Spreadsheet For Estimating Universal Service Support Using Proposed Input Values In The Forward-Looking Cost Model*, CC Docket Nos. 96-45, 97-160, DA 99-1322 (released July 2, 1999). The source of the \$30 average revenue figure is *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, First Report and Order, 12 FCC Rcd 8776, 8924, ¶ 267 (1997) (“*Universal Service First Report and Order*”).

compromising affordability. Western Wireless suggests that the Commission adopt a tapered structure for calculating universal service, as follows:

<u>Cost per line</u>	<u>Support provided</u>
Less than \$30 (150%)	-0-
\$30-\$40 (150%-200%)	25%
\$40-\$60 (200%-300%)	50%
\$60-\$100 (300%-500%)	75%
Above \$100 (500%)	100%

B. Wireless Lines Should Be Included in Calculating the States' Ability to Support Universal Service.

Western Wireless agrees with the Commission's decision that the amount of federal support should be determined, in part, based on a fixed dollar amount per line that approximates a state's ability to support its universal service needs internally. In calculating a state's ability to use its own resources to support universal service, the Commission should include wireless lines in the calculation, including lines of wireless carriers that are not ETCs. Notwithstanding the limited jurisdiction of the states over wireless providers under Section 332 of the Act, the Commission has determined that wireless carriers may be required to contribute to intrastate universal service support mechanisms. ^{16/} Because states have the ability to require contributions from wireless carriers, including those that have not been designated as ETCs, there is no reason not to include wireless lines in

^{16/} See *Pittencrieff Communications, Inc.*, 13 FCC Rcd 1735 (1997), *aff'd sub nom. Cellular Telecoms. Indus. Ass'n v. FCC*, 168 F.3d 1332 (D.C. Cir. 1999).

determining a state's ability to support its own universal service needs. This, in turn, will help keep the size of the federal fund at a manageable level.

Moreover, the Commission should include the lines of non-ETC wireless carriers, as well as ETCs, in this computation, in order to avoid creating incentives for state commissions to deny ETC status to wireless carriers. If solely ETCs' lines, but not the lines of other carriers, were included in the imputed state share of the fund, then the state's imputed share would grow if an additional carrier were designated as an ETC. This could lead a state commission (unlawfully) to reason that, if it could find some reason to deny ETC status to a wireless carrier, it could reduce its consumers' share of responsibility for the federal high-cost fund. For this reason, among others, the Commission should include all carriers' lines in the computation of a state commission's assumed responsibility for a share of the high-cost fund.

C. Limits Should Be Imposed on Any "Hold Harmless" Mechanism.

If any form of "hold harmless" provision is adopted, it should be applied on a state-by-state, rather than carrier-by-carrier, basis, and for a limited period of time. Absent some showing that the cost model adopted by the Commission improperly calculates the cost of providing service in a particular area, a reduction in support for a particular carrier as a result of the transition to the new federal support mechanism suggests that the carrier was collecting an excessive amount under the old regime. Thus, it is by no means clear that some

type of “hold harmless” provision would be necessary to prevent “potentially significant rate increases.” 17/ While some carriers’ excessive rates of return on equity may be jeopardized, there is no reason to force consumers across the country, who ultimately pay universal service contributions, to continue subsidizing these carriers’ returns indefinitely. The high-cost support system should be designed to protect consumers, not carrier profits.

Moreover, any “hold harmless” provision should apply for a strictly limited period of time, preferably no longer than one year. This limited transition period is consistent with the approach the Commission has taken in other situations involving adjustments to how carriers recover their costs. 18/ One year is a sufficient transition period in which carriers and state commissions can adjust to the reduction in support, either by adopting an intrastate support fund, adjusting rate levels, or other means. A longer transition period would do nothing more than provide a windfall to incumbent carriers.

17/ *Seventh Report and Order* at ¶ 117.

18/ *See, e.g., Transport Rate Structure and Pricing*, 7 FCC Rcd 7006, ¶¶ 61-64 (1992), *recon.*, 8 FCC Rcd 5370, ¶¶ 51-55 (1993), *second recon.*, 8 FCC Rcd 6233, ¶ 4 (1993) (restructured “transport interconnection charge” intended to be revenue neutral only during first year after implementation of rate structure change), *rev’d*, *Competitive Telecommunications Ass’n v. FCC*, 87 F.3d 522 (D.C. Cir. 1996) (reversed in part because transition period was impermissibly long). The Commission took a similar approach for the rate structure changes in *Access Charge Reform*, 12 FCC Rcd 15982 (1997), *aff’d sub nom. Southwestern Bell Tel. Co. v. FCC*, 153 F.3d 523 (8th Cir. 1998).

During the period when a “hold harmless” requirement is in effect, ILECs must not be “held harmless” for the losses to competitive entrants; as the Commission recognizes, this would violate competitive neutrality. ^{19/} For exactly the same reason, new entrants must be eligible to receive the same level of support as an incumbent would receive for serving a customer. This would in no way “represent a windfall to an efficient competitor.” ^{20/} Rather, it would ensure that competition on a level playing field is possible. It would be anathema for the Commission to even consider a system that would reward an ILEC’s inefficiency with additional support while denying the same support to a more efficient competitor. Such an approach would discourage competitive entry where it is needed most, and preserve the monopoly of an inefficient incumbent, a result that is plainly at odds with the goals of the 1996 Act. Rather, competitive entrants should receive an identical amount of support as ILECs in any given area.

Regardless of the type of “hold harmless” approach the Commission ultimately adopts, it should not change the fundamental premise that federal support should be provided directly to carriers, rather than to states. As the Joint Board recognized, there is no evidence that Congress intended a switch to some type of block grant to states from the long-standing practice of direct distribution to

^{19/} *Seventh Report and Order* at ¶ 74.

^{20/} *Id.* at ¶ 122.

carriers. 21/ The fact that one or more incumbents may experience a reduction in support as a result of the transition to new federal support mechanisms provides no basis for a fundamental change in how support is distributed. The Commission's direct supervision over the process of distributing support to individual carriers will ensure that the high-cost program is implemented in a competitively neutral way and that the principle of portability is enforced strictly. 22

III. MARKET FORCES WILL ADEQUATELY ENSURE THAT COMPETITIVE ENTRANTS COMPLY WITH SECTION 254(e).

Regulatory measures will not be necessary to ensure that competitive entrants use universal service support "only for the provision, maintenance, and upgrading of facilities and services for which the support is intended." 23/ The FNPRM seeks comment on a number of possible regulatory measures that could be imposed to enforce Section 254(e). 24/ These regulatory measures may well be

21/ *Id.* at ¶ 121; *see also id.* at separate statements of Chairman Kennard and Commissioner Ness.

22/ As the Commission writes the rules implementing the forward-looking cost-based high-cost support program, it should take care to ensure that all carriers, incumbents and new entrants alike, are treated the same for procedural purposes. The Commission should avoid importing into the new system the unfortunate "quirk" in its current rules, 47 C.F.R. § 54.307, which apparently forces new entrants to wait up to two years for support payments that are provided to ILECs immediately. *See Western Wireless Corporation Petition for Clarification or Rule-making in Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, filed Oct. 15, 1998; *Western Wireless Corporation Petition for Clarification or Rulemaking*, Public Notice, 13 FCC Rcd 22364 (1998) (seeking comment on same).

23/ 47 U.S.C. § 254(e).

24/ *Seventh Report and Order* at ¶¶ 113-116.

needed to prevent ILECs from abusing their monopoly power to misuse universal service support, or to pocket such support while charging excessive rates for supported services and using the support to cross-subsidize other offerings.

Competitive entrants, including wireless carriers, will be unable to engage in such abuses. First, market forces (and competition from the regulated ILEC) will constrain their rates. Moreover, the federal high-cost universal service program will be structured in a manner that will inherently preclude such abuses by competitive ETCs. New entrants will provide universal service at affordable rates in high-cost areas only to the extent that support is available, and subsidies will be provided only to the extent carriers have garnered subscribers. This structure will ensure that competitive entrants use universal service support only for the purposes outlined in Section 254(e). If a competitive entrant were to attempt to raise its rates to consumers to allow it to retain some portion of the subsidy and use it for other purposes, another competing carrier would offer universal service at a more reasonable rate, and would capture both the customer and the universal service support for that customer.

Moreover, several of the regulatory approaches proposed by the Commission are, as a statutory matter, inapplicable to CMRS carriers. For example, the FNPRM tentatively concludes that federal support should be made available as part of the state rate-setting process. 25/ The FNPRM also seeks

25/ *Id.* at ¶ 114.

comment on “whether it would be appropriate to condition the receipt of federal universal service high-cost support on any state action, including adjustments to local rate schedules[.]” 26/ But of course Section 332 of the Act forbids state regulation of the rates of CMRS carriers, and would preclude the application of either of these provisions to CMRS carriers. As the Commission recently reaffirmed, CMRS carriers may become ETCs (and thereby receive universal service support) without forfeiting their exemption from state rate regulation. 27/ In any case, as discussed above, such measures are not only inapplicable to wireless carriers, but also would be entirely unnecessary with respect to such competitive entrants in the universal service marketplace.

IV. THE COMMISSION MUST REFORM UNIVERSAL SERVICE AND ACCESS CHARGES IN A MANNER THAT AVOIDS REPLACING ONE IMPLICIT SUBSIDY WITH ANOTHER.

Western Wireless strongly supports the Commission’s proposals to ensure that all universal service support is explicit, by removing implicit universal service support from the ILECs’ excessive interstate access charges. As the Commission proceeds to implement this admirable, but highly complicated, policy objective, it should take care to avoid creating new implicit subsidy flows. First, while it is reasonable to require a dollar-for-dollar offset against the ILECs’ access

26/ *Id.* at ¶ 115.

27/ *Id.* at ¶ 72 (citing *Universal Service First Report and Order*, 12 FCC Rcd at 8858-59, ¶ 145 (“[t]he treatment granted to certain wireless carriers under section 332(c)(3)(A) does not allow states to deny wireless carriers eligible status.”)).

charges in the common line price cap basket, such offsets should *not* go both ways. The Commission should be highly skeptical of ILEC claims that every dollar in their excessive access charges represents implicit universal service support. A significant amount of the ILECs' current access charges are simply "fat," and these excessive revenues should not be guaranteed in the long run by being shifted into the high-cost fund. 28/

Second, while Western Wireless takes no position on the Rogerson/Kwerel proposals, 29/ if a system along those lines is adopted it must not include implicit support. Rogerson and Kwerel suggest a "variation on the[ir] basic proposal" in which implicit support would play a major role. 30/ Under this alternative, CLECs would be "required to collect the same fee on low cost lines that the ILEC is determined to be implicitly collecting," and would be "allowed to receive the same subsidy on high cost lines that the ILEC is determined to be implicitly receiving," presumably through the CLEC's own access charges. 31/ Western Wireless adamantly opposes this alternative proposal. First, it would violate the

28/ As noted above, the national average ILEC revenue per line, \$30 (which includes access charge revenue), far exceeds the national average forward-looking cost per line, about \$20 (which includes an 11.25% rate of return).

29/ *Rogerson/Kwerel, supra* note 10.

30/ *Id.* at 26-29.

31/ *Id.* at 26.

fundamental principle, embodied in the 1996 Act and reaffirmed in virtually every order in this docket, that support flows must be made explicit, rather than implicit.

Moreover, this approach would unreasonably deprive CMRS carriers of support comparable to that received by ILECs, violating the principle that all support should be portable. CMRS carriers are prohibited from establishing access charge tariffs, and as a practical matter it is difficult or impossible for CMRS carriers to collect access charges from IXCs. ^{32/} Thus, CMRS carriers would be barred from collecting “the same subsidy on high cost lines that the ILEC is determined to be implicitly receiving.” ^{33/} If the Commission decides to pursue the Rogerson/Kwerel proposal, it should adopt the basic version rather than the so-called variant alternative that relies on implicit subsidies that, as a practical matter, will be unavailable to many carriers.

^{32/} See Western Wireless Comments in *Access Charge Reform*, CC Docket No. 96-262 (filed Oct. 26, 1999) (proposing that the Commission allow permissive tariffing by CMRS providers to establish access charges for the origination and termination of long distance traffic), in response to Public Notice FCC 98-256, *Commission Asks Parties to Update and Refresh Record for Access Charge Reform and Seeks Comment on Proposals for Access Charge Reform Pricing Flexibility* (rel. Oct. 5, 1998); see also Western Wireless Comments and Reply Comments in *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, filed, respectively, Jan. 11 and Jan. 25, 1999 (advocating same).

^{33/} Rogerson/Kwerel at 26.

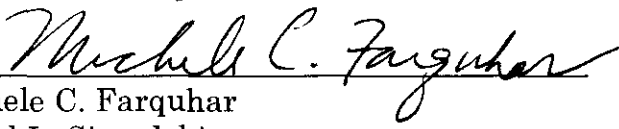
V. CONCLUSION

The Commission should adopt a competitively-neutral, explicit and portable high-cost support system that is narrowly targeted to the consumers that need it, as discussed above.

Respectfully submitted,

WESTERN WIRELESS CORPORATION

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Dated: July 23, 1999

CERTIFICATE OF SERVICE

I, Venita Otey, hereby certify that on this 23rd day of July, 1999, copies of the foregoing Comments on the Further Notice of Proposed Rulemaking in CC Docket No. 95-45 were served on the parties listed below by hand delivery or first class mail.


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